

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Clarification of the Commission's Rules and)	WC Docket No. 01-338
Policies Regarding Unbundled Access to)	
Incumbent Local Exchange Carriers' Inside)	
Wire Subloop)	

AT&T COMMENTS IN SUPPORT OF PETITION

Pursuant to the Commission's Public Notice, DA 04-3520, issued November 4, 2004, AT&T Corp. ("AT&T") submits the following comments in support of the Petition of Cox Oklahoma Telecom, L.L.C. ("Cox") ("Petition"), which seeks a declaration confirming that (1) competitive LECs have a right to direct physical access to incumbent LECs' inside wire subloops in Multiple Tenant Environments ("MTEs"); (2) this right allows competitive LECs to obtain direct access to inside wire subloops at incumbent LECs' terminal blocks in MTEs; and (3) this right exists regardless of any state law or regulation that would otherwise limit the right. Petition at 1.

Summary

The Commission's existing precedents make crystal clear that competitive carriers are impaired without – and are entitled to – direct physical access to subloops in MTEs in order to support the provision of facilities-based competitive services to end users in such buildings. Thus, there is no legitimate question that federal law is exactly as Cox paints it in its first two requests for relief and elsewhere in the Petition. Thus, the essential question here is whether state law – in this case state definitions that conflict with those established in federal law – can be relied upon to impede the access to inside

wire that competitive carriers require to provide competitive service in an MTE. The answer to that question is clearly no.

Argument

The Commission has long supported competitive access to MTEs and has implemented a series of rules that promote such access, which is essential to competitive carriers' ability to provide service to end users in multi-tenant buildings. The Commission's efforts culminated in the requirements set forth in the *Triennial Review Order*¹ and Rules 51.319(b)(2)&(c) of the Commission's rules, 47 C.F.R. § 51.319(b)(2)&(c). Specifically, the Commission found in the *Triennial Review Order* (§ 348) that competitive carriers are impaired *on a national basis* without unbundled access to subloops used to access customers in multiunit premises because of the incumbent LECs' prior exclusive access and first-mover advantages, as well as the costs and operational problems associated with self-provisioning such subloops. Because of these and related entry barriers, the Commission determined that:

For all requesting carriers, especially carriers constructing facilities-based networks, the ability to access subloops at, or near, the customer's premises in order to reach the infrastructure in those premises where they otherwise would not be able to take their loop the full way to the customer, is critical. *Id.*; *see also id.* ¶ 351.

Accordingly, the Commission adopted Rules 51.319(b)(2)&(c). The former rule defines subloops in MTEs as "any portion of the loop that it is technically feasible to access at a terminal in the incumbent LEC's outside plant at or near a multiunit premises [including] . . . inside wire." Inside wire, in turn "is defined as all loop plant owned or

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, released August 21, 2003, *rev'd on other grounds, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*") ("*Triennial Review Order*"). None of the portions of the *Triennial Review Order* referenced herein was affected by the D.C. Circuit's decision in *USTA II*.

controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in § 68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in § 68.3 of this chapter.” And technically feasible access is defined as “any point in the incumbent LEC's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premises [including] but not limited to . . . the network interface device, the minimum point of entry [and] the single point of interconnection . . .” § 51.319(b)(2)(i).

Section 51.319(c) requires incumbent LECs to provide nondiscriminatory unbundled access to the network interface device (“NID”) on a standalone basis and is defined as “any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant.” Moreover, that section requires an incumbent LEC to “permit a requesting carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.”

Additionally, the *Triennial Review Order* clarified that incumbents may not require competitors to collocate separate terminal facilities in order to gain access to inside wire subloops, stating that its rules are not intended to force competitors seeking NID or inside wire subloop access to establish collocations.² Specifically regarding terminal equipment, the Commission found that competitors need not “collocate”

² The *Triennial Review Order* states “[t]he rules we adopt today make clear that *no* collocation requirement exists with respect to subloops used to access the infrastructure in multiunit premises.” *Id.* at ¶ 350 (emphasis in original).

separate terminal facilities to gain access to the inside wire subloops, or other inside wire used by the LEC to access customers in MTEs.³

Together, these provisions support Cox's first two requests. First, since (1) a competitor may access a subloop "*at any point* in the incumbent LEC's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premises," and (2) such points include the NID and "*any other technically feasible point*", that necessarily means that a competitor must be provided "direct physical access" to ILEC inside wire subloops at a NID -- or at any other technically feasible point -- without any requirement to collocate any additional equipment.

Second, subloops may be accessed at "terminals" and there can be no dispute that access to ILEC inside wiring at an ILEC terminal block is "technically feasible." Indeed, Cox (at 4) explains that, in its experience, "*most* incumbent LECs permit a competitive LEC to disconnect the inside wire from the incumbent LEC terminal block and connect it to the competitive LEC interface without any interference by the incumbent LEC" (emphasis added). Thus, there is no question that the Commission's Rules permit a competitive carrier to directly access inside wire subloops at ILEC terminal blocks in MTEs. Indeed, the *Triennial Review Order* (n.1013) makes this explicit, stating: "accessible terminals contain cables and . . . wire pairs . . . which enable a *competitor's technician* to cross-connect its terminal to the incumbent LEC's to access the incumbent LEC's loop from that point all the way to the end user customer" (emphasis added).

³ *Id.* at ¶ 358.

As a result, the only significant issue here is whether a state may somehow circumvent these “critical” federal requirements. And the obvious answer is that the Commission’s Rules prevent any such attempt.

As Cox explains (Petition at 5-6), the essential issue in Oklahoma is that SWBT urged (and the Oklahoma Corporation Commission accepted) that the “demarcation point” in residential MTEs in that state is at the first telephone jack in the customer’s premises. As a result, SWBT sought to impose several “costly, time-consuming and costly options” that effectively denied Cox reasonable access to customer locations (Petition at 6-7). In particular, those options would have required Cox to use (and pay for) SWBT technicians, “pay impractically high rates” and, for two of those options, construct intermediate facilities – all in lieu of simply allowing Cox technicians to do what is clearly technically feasible (and indeed required in many states), *i.e.*, perform a simple connection at a terminal block at the MTE.

That is flatly inconsistent with the *Triennial Review Order* and the Commission’s Rules, which allow competitors’ technicians to make cross-connections and define “subloops” to include “any *portion* of the loop that it is *technically feasible* to access at a *terminal* in the incumbent LEC’s outside plant.” Rule 51.319(b)(2) (emphasis added). As explained above, there is no basis to insist that ILEC technicians be used to perform simple cross-connects, nor may an ILEC require a competitor to collocate any equipment in order to access inside wire. Moreover, even if Oklahoma law defines the demarcation point between the ILEC’s outside plant and the customer’s wire (and the NID) as the first jack inside the customer’s premises, that merely gives a competitive carrier the *right* to access all of the ILEC’s inside wire up to that point. But the Commission’s Rule clearly

does not *require* a competitor to use *all* of the ILEC's inside wire as a subloop. Rather, the competitor may access "*any portion*" of the ILEC's inside wire and may do so at any "technically feasible . . . terminal" -- such as a terminal block, which is in fact designed for exactly that purpose.

Accordingly, debates over the Oklahoma definition of a NID (*see* Petition at 13) are irrelevant.⁴ Indeed, the *Triennial Review Order* (n.1035) recognizes that there are numerous situations in which "the demarcation point, the MPOE, and the NID are not all located at the same point" and it expressly states that the Commission's "subloop unbundling rules seek to encompass [such] various other network configurations." A competitive carrier thus has the option of accessing only a *portion* of an ILEC's inside wire and may connect to ILEC inside wire subloops at *any* "terminal" where access is technically feasible, including a terminal block.

Finally, to the extent that the Oklahoma Commission's decision was based upon assertions that denial of direct access by Cox technicians was necessary to protect the integrity of SWBT's network (*see* Petition at 7), that concern is bogus. First, it is simple and straightforward for a technician to make connections at a terminal block, and even if a mistake were made -- which is exceedingly rare (*see* Petition at 4 (explaining that Cox experienced only one trouble on over 100,000 installations in Oklahoma over five years)) -- it could not affect service to any significant number of customers (Petition at 12). Thus, there is no basis for any requirement that ILEC technicians perform such work.

⁴ If the state definitions were relevant, they would in all events be subject to preemption under Section 253(d), because any state law or rule that would impinge upon the Commission's national finding of impairment regarding such critical access may not be allowed to stand.

Conclusion

The Petition should be granted.

Respectfully submitted,

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SERVICE LIST

I, Karen Kotula, do hereby certify that on this 6th day of December 2004, a copy of the foregoing "AT&T Comments in Support of Petition" has been delivered to the following parties:

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